

By Larry Don Shaw

H B. No. 2440

A BILL TO BE ENTITLED

AN ACT

relating to reassigning certain radiation control functions from the Texas Department of Health to the Texas Water Commission.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 3, Chapter 72, Acts of the 57th Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas Civil Statutes), is amended by adding Subdivisions (v) and (w) to read as follows:

(v) "Department" means the Texas Department of Health.

(w) "Water commission" means the Texas Water Commission.

SECTION 2. Section 3(a), Chapter 72, Acts of the 57th Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) "By-product material" means:

(1) Any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; and

(2) The tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes[~~7---and---ether---tailings---having---similar---radiological~~ characteristics].

1 SECTION 3. Sections 3(q) and (u), Chapter 72, Acts of the
2 57th Legislature, Regular Session, 1961 (Article 4590f, Vernon's
3 Texas Civil Statutes), are amended to read as follows:

4 (q) "Radioactive waste" means any discarded or unwanted
5 radioactive material unless exempted by [Agency] rule of the water
6 commission adopted under Subsection (c) of Section 6 of this Act or
7 any radioactive material that would require processing before it
8 could be put to a beneficial reuse. The term does not include
9 by-product material defined in Subdivision (2) of Subsection (a) of
10 Section 3 of this Act or uranium ore.

11 (u) "Disposal" means isolation or removal of radioactive
12 wastes from mankind and his environment with no intention of
13 subsequent retrieval. The term does not include emissions and
14 discharges under rules of the water commission [Agency].

15 SECTION 4. Section 4, Chapter 72, Acts of the 57th
16 Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas
17 Civil Statutes), is amended to read as follows:

18 Sec. 4. AUTHORITY OF THE TEXAS RADIATION CONTROL AGENCY AND
19 THE WATER COMMISSION. (a) The Texas Department of Health is
20 designated as the Texas Radiation Control Agency and shall regulate
21 the use, manufacture, and transport of radioactive material. The
22 water commission shall regulate the management of radioactive waste
23 and by-product material.

24 (b) The Commissioner of the Texas Department of Health shall
25 designate an individual to be Director of the Radiation Control
26 Program, who shall perform the functions vested in the Agency
27 pursuant to the provisions of this Act with the exception of the

1 issuance of licenses under Sections 6A and [Section] 6B of this
2 Act. The water commission [~~Texas--Board--of--Health---or---the~~
3 ~~Commissioner,--if--designated--by--the-Board,~~] shall issue licenses
4 under Sections 6A and [Section] 6B of this Act. Nothing in this
5 Act shall require the licensing or registration under this Act of a
6 nuclear reactor facility licensed by the Commission.

7 (c) In accordance with the laws of the State of Texas, the
8 Agency and the water commission may employ, compensate, and
9 prescribe the powers and duties of such individuals as may be
10 necessary to carry out the provisions of this Act.

11 (d) The Agency or the water commission, or both, for the
12 areas within their jurisdiction may [shall], for the protection of
13 the occupational and public health and safety and the environment:

14 (1) Develop programs for evaluation of hazards associated
15 with use of sources of radiation;

16 (2) Develop programs with due regard for compatibility with
17 federal programs for regulation of sources of radiation;

18 (3) Formulate, adopt, promulgate and repeal rules and
19 guidelines that[~~7--which~~] shall provide for:

20 (A) licensing and registration, relating to control and
21 transport of sources of radiation with due regard for compatibility
22 with the regulatory programs of the Federal Government; and

23 (B) the transport and routing of radioactive material within
24 the State of Texas;

25 (4) Issue such orders or modifications thereof as may be
26 necessary in connection with proceedings under this Act;

27 (5) Advise, consult, and cooperate with other agencies of

1 the state, the Federal Government, other states and interstate
2 agencies, local governments, and with groups concerned with control
3 and transport of sources of radiation;

4 (6) Have the authority to accept and administer loans,
5 grants or other funds or gifts, conditional or otherwise, in
6 furtherance of its functions, from the Federal Government and from
7 other sources, public or private;

8 (7) Encourage, participate in, or conduct studies,
9 investigations, training, research, and demonstrations relating to
10 control of sources of radiation;

11 (8) Collect and disseminate information relating to control
12 and transport of sources of radiation, including:

13 (A) Maintenance of a file of all license applications,
14 issuances, denials, amendments, transfers, renewals, modifications,
15 suspensions and revocations;

16 (B) Maintenance of a file of registrants possessing sources
17 of radiation requiring registration under the provisions of this
18 Act and any administrative or judicial action pertaining thereto;
19 and

20 (C) Maintenance of a file of all rules and guidelines
21 relating to regulation of sources of radiation, pending or
22 promulgated, and proceedings thereon; and

23 (9) Adopt as a rule any memorandum of understanding between
24 the Agency or the water commission, or both, and any other state
25 agency.

26 [~~(B)--Maintenance--of--a--file--of--all--known--locations--in--Texas~~
27 ~~where-radioactive-material-has-been-disposed-of-and-where-soils--or~~

1 facilities-have-been-contaminated,-together-with-any-information-on
2 inspection--reports--concerning--the--material--disposed--of-and-on
3 radiation-levels-at-the-locations];

4 (e) The water commission shall:

5 (1) [~~9~~] Have the authority to acquire by purchase, gift,
6 or under any other authority of law any by-product material as
7 defined in Subdivision (2) of Subsection (a) of Section 3 of this
8 Act and fee simple title in any land, affected mineral rights, and
9 in buildings at which by-product material as defined in Subdivision
10 (2) of Subsection (a) of Section 3 of this Act has been disposed of
11 and abandoned, so that it can be managed in a manner consistent
12 with public health, safety, and the environment;

13 (2) [~~9A~~] Have the authority to acquire, by purchase or
14 gift, fee simple title in any land, affected mineral rights, and in
15 buildings at which radioactive waste is being or can be disposed of
16 in a manner consistent with public health and safety and the
17 environment. Property acquired under this subsection shall be
18 dedicated to use only for disposing of radioactive waste until the
19 water commission [~~Agency~~] determines that another use would not
20 endanger the health, safety, or general welfare of the public or
21 the environment. All right, title, and interest in, of, and to
22 radioactive waste accepted for disposal at these facilities shall
23 become the property of the state and shall be administered and
24 controlled in the name of the state;

25 (3) [~~9B~~] Have the authority to lease property acquired
26 under Subdivision 2 [~~Subsection-9A~~] of this subsection [~~section~~]
27 to persons to operate sites for disposing of radioactive waste. A

1 person's actions in disposing of radioactive waste shall be under
2 the direct regulation of the water commission [Agency] and shall be
3 in accordance with rules adopted by the water commission [Agency];

4 (4) Maintain a file of all known locations in Texas in which
5 radioactive material has been disposed and soils or facilities have
6 been contaminated, together with information about inspection
7 reports concerning the material disposed of and radiation levels at
8 those locations; [{9C}--Formulate,--adopt,--promulgate,--and--repeal
9 rules--and--guidelines--providing--for--the--transport--and--routing--of
10 radioactive-material-within-the-State-of-Texas;]

11 (5) [{9D}] Conduct studies of the need for radioactive waste
12 processing and disposal facilities and technologies as considered
13 necessary by the water commission [Agency] to minimize the risks to
14 the public and the environment from the management of radioactive
15 waste;

16 (6) [{9E}] Establish, as considered necessary by the water
17 commission [Agency], a classification system for radioactive waste
18 based on radiological, chemical, and biological characteristics and
19 on physical state so that radioactive wastes can be managed safely
20 and compatibly; and

21 (7) [{9F}] Cooperate with and encourage the use of
22 interstate compacts, including the Southern States Energy Board,
23 for the development of regional sites that divide the burden of
24 disposal of radioactive waste generated in the region among the
25 states;

26 (8) [{10}] Administer the fund in accordance with Section 16
27 of this Act; and

1 (9) [~~{11}~~] Prepare and update emergency and environmental
2 surveillance plans for fixed nuclear facilities within the State of
3 Texas[~~,-and~~

4 [~~{12}--Adopt--as--a--rule--any--memorandum--of--understanding~~
5 ~~between-the-Agency-and-any-other-state-agency~~].

6 SECTION 5. Section 5(a), Chapter 72, Acts of the 57th
7 Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas
8 Civil Statutes), is amended to read as follows:

9 (a) There is hereby established a Radiation Advisory Board
10 consisting of fifteen (15) [~~eighteen-{18}~~] members. The Governor
11 shall appoint to the Board individuals as follows: one (1) from
12 industry, who shall be trained in the field of nuclear physics,
13 science and/or nuclear engineering; one (1) from labor; one (1)
14 from agriculture; one (1) from insurance; one (1) engaged in the
15 use and application of nuclear physics in medicine; one (1) from
16 public safety; one (1) hospital administrator; two (2)
17 representatives of the general public; three (3) persons licensed
18 by the Texas State Board of Medical Examiners specializing in: one
19 (1) from nuclear medicine, one (1) from pathology, and one (1) from
20 radiology; [~~one--{1}--representative--from--the--nuclear---utility~~
21 ~~industry;---one---{1}---representative--of--the--radioactive--waste~~
22 ~~processing-industry;~~] one (1) representative of the petroleum
23 well-servicing industry; one (1) health physicist; and one (1)
24 representative licensed by the State Board of Dental Examiners[~~,-~~
25 ~~and--one--{1}--representative-from-the-uranium-mining-industry~~]. A
26 person is not eligible for appointment as a representative of the
27 general public if the person or the person's spouse is engaged in

1 an occupation in the field of health care or is employed by,
2 participates in the management of, or has, other than as a
3 consumer, a financial interest in part of the nuclear utility
4 industry or in a business entity or other organization that is
5 licensed under Section 6A or 6B of this Act. Members of the Board
6 hold office for staggered terms of six (6) years. Provided,
7 members of the Board shall receive no salary for services but may
8 be reimbursed for actual expenses incurred in connection with
9 attendance at Board meetings or for authorized business of the
10 Board.

11 SECTION 6. Section 6, Chapter 72, Acts of the 57th
12 Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas
13 Civil Statutes), is amended to read as follows:

14 Sec. 6. LICENSING AND REGISTRATION OF SOURCES OF RADIATION.

15 (a) The Agency shall provide by rule for general or specific
16 licensing of radioactive materials, or devices or equipment
17 utilizing such materials but not including by-product materials or
18 radioactive waste.

19 (b) The water commission shall provide by rule for general
20 or specific licensing of by-product materials or radioactive waste.

21 (c) The [Such] rules of the Agency or water commission shall
22 provide for issuance, amendment, suspension or revocation of
23 licenses. The Agency or water commission rules, as applicable
24 [Such-rules] shall provide that:

25 (1) Each application for a specific license shall be in
26 writing and shall state such information as the Agency or water
27 commission by rule may determine to be necessary to decide the

1 technical, insurance and financial qualifications or any other
2 qualification of the applicant as the Agency or water commission
3 may deem reasonable and necessary to protect the occupational and
4 public health and safety and the environment. The Agency or water
5 commission may at any time after the filing of the application, and
6 before the expiration of the license, require further written
7 statements and may make such inspections as the Agency or water
8 commission may deem necessary in order to determine whether the
9 license should be granted or denied or whether the license should
10 be modified, suspended, or revoked. All applications and
11 statements shall be signed by the applicant or licensee. The
12 Agency or water commission may require any applications or
13 statements to be made under oath or affirmation;

14 (2) Each license shall be in such form and contain such
15 terms and conditions as the Agency or the water commission may
16 prescribe;

17 (3) No license issued under the authority of this Act shall
18 be assigned except to persons qualified pursuant to rules of the
19 Agency or the water commission;

20 (4) The terms and conditions of all licenses shall be
21 subject to amendment, revision, or modification by rules, or orders
22 issued in accordance with the provisions of this Act;

23 (5) For each application for a specific license that
24 involves the disposal or processing of any radioactive waste from
25 other persons, the applicant shall provide any additional
26 information that is necessary for the water commission's [Agency]
27 consideration of the following factors in making its licensing

1 decision:

2 (A) site suitability, including geological, hydrological,
3 and meteorological factors, and natural hazards;

4 (B) compatability with present uses of the land in the
5 vicinity of the site;

6 (C) socioeconomic effects on surrounding communities of
7 operation of the licensed activity and of associated transportation
8 of radioactive material;

9 (D) need for and alternatives to the proposed activity
10 including an alternative siting analysis prepared by the applicant;

11 (E) qualifications of the applicant including financial,
12 technical, and past operating practices;

13 (F) background monitoring plans for the proposed site;

14 (G) suitability of facilities associated with the proposed
15 activities;

16 (H) chemical, radiological, and biological characteristics
17 of the radioactive waste and waste classification under Section
18 4(e)(6) [~~Section-4(d)(9E)~~] of this Act;

19 (I) adequate insurance of the applicant to cover potential
20 injury to any property or any person, including potential injury
21 from transportation-associated risks;

22 (J) training and retraining programs for the applicant's
23 employees;

24 (K) monitoring and record-keeping and reporting program;

25 (L) spill detection and cleanup plans for the licensed site
26 and related to associated transportation of radioactive material;

27 (M) decommissioning and postclosure care plans;

1 (N) security plans;

2 (O) worker monitoring and protection plans;

3 (P) emergency plans; and

4 (Q) a monitoring program for applicants that includes
5 prelicense and postlicense monitoring of background radioactive and
6 chemical characteristics of the soils, groundwater, and vegetation;

7 (6) The water commission [Agency] by rule shall provide
8 specific criteria for the different types of licensed radioactive
9 waste activities for the factors listed in Subdivision (5) of this
10 subsection and may include additional factors and criteria that the
11 water commission [Agency] determines necessary for full
12 consideration of a license.

13 (7) In adopting rules for the issuance of licenses for new
14 sites for processing or disposal of radioactive waste from other
15 persons, the water commission [Agency] shall adopt criteria for the
16 designation of unsuitable sites, including but not limited to:

17 (A) flood hazard areas;

18 (B) areas with characteristics of discharge from or recharge
19 of any groundwater aquifer systems; or

20 (C) areas where soil conditions are such that spill cleanup
21 would be impracticable.

22 Under this Subdivision, the water commission [Agency] shall
23 consult with the State Soil and Water Conservation Board, the
24 Bureau of Economic Geology, and other appropriate State agencies in
25 the development of proposed rules and shall issue rules that:

26 (A) require selection of sites in areas where natural
27 conditions minimize potential contamination of surface water and

1 groundwater; and

2 (B) prohibit issuance of licenses for unsuitable sites as
3 defined by the rules of the water commission [Agency].

4 (8) No licensee may operate a facility to dispose of or
5 process radioactive waste until the licensee has obtained licenses
6 or permits from other agencies as required by law; and

7 (9) No license to dispose of radioactive waste shall be
8 issued to any person other than a public entity specifically
9 authorized by law for radioactive waste disposal.

10 (d) [~~b~~] The Agency is authorized to require registration
11 or licensing of other sources of radiation.

12 (e) [~~e~~] The Agency is authorized to issue rules that
13 exempt certain sources of radiation or kinds of uses or users from
14 the licensing or registration requirements set forth in this
15 Section when the Agency makes a finding that the exemption of such
16 sources of radiation or kinds of uses or users will not constitute
17 a significant risk to the health and safety of the public and the
18 environment.

19 (f) [~~d~~] Rules promulgated pursuant to this Act may provide
20 for recognition of other state or federal licenses as the Agency or
21 water commission shall deem desirable subject to such registration
22 requirements as the Agency or water commission may prescribe.

23 (g) [~~e~~] Each applicant for a license or for the renewal of
24 a license shall demonstrate to the water commission [Agency],
25 before the issuance or renewal of a license, that the applicant is
26 financially qualified to conduct the licensed activity, including
27 any required decontamination, decommissioning, reclamation, and

1 disposal. The licensee shall submit proof to the water commission
2 [Agency] of its financial qualifications at such intervals as the
3 water commission [Agency] may require by rule or in the license.
4 The qualifications of and security provided by a licensee under
5 Section 6A or 6B of this Act shall be reevaluated by the water
6 commission every five (5) years and such reevaluation may coincide
7 with license renewal procedures if both are to occur in the same
8 year.

9 (h) [~~f~~] A licensee may be required to provide security
10 acceptable to the water commission [Agency] to assure performance
11 of its obligations under this Act.

12 (i) [~~g~~] The amount and type of security required shall be
13 determined under rules of the water commission [Agency] in
14 accordance with criteria that include the following:

15 (1) consideration of the need for and scope of any
16 decontamination, decommissioning, reclamation, or disposal activity
17 reasonably required to protect the public health and safety and the
18 environment;

19 (2) reasonable estimates of the costs of decontamination,
20 decommissioning, reclamation, and disposal as provided by Section
21 16 of this Act; and

22 (3) the costs of perpetual maintenance and surveillance, if
23 any.

24 (j) [~~h~~] In making the determination of whether to grant,
25 deny, amend, revoke, suspend, or restrict a license or
26 registration, the Agency or water commission may consider those
27 aspects of an applicant's or licensee's background that, in its

1 judgment, bear materially on ability to fulfill the obligations of
2 licensure, including but not limited to technical competency and
3 its record in areas involving radiation.

4 (k) [~~+~~] Before July 6, 1987, [~~neither~~] the water
5 commission [~~Texas-Board-of-Health-nor-the-Commissioner-of-the-Texas~~
6 ~~Department--of--Health~~] may not issue a license for construction or
7 operation of a disposal site to the Texas Low-Level Radioactive
8 Waste Disposal Authority created under the Texas Low-Level
9 Radioactive Waste Disposal Authority Act (Article 4590f-1, Vernon's
10 Texas Civil Statutes).

11 SECTION 7. Section 6A, Chapter 72, Acts of the 57th
12 Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas
13 Civil Statutes), is amended to read as follows:

14 Sec. 6A. ADDITIONAL REQUIREMENTS FOR CERTAIN BY-PRODUCT
15 MATERIALS. (a) A radioactive materials license issued or renewed
16 after the effective date of this Act, for any activity that results
17 in the production of by-product material as defined in Subdivision
18 (2) of Subsection (a) of Section 3 of this Act, shall minimize and
19 to the maximum extent practicable eliminate the need for long-term
20 maintenance and monitoring and shall contain terms and conditions
21 the water commission [~~Agency~~] determines to be necessary to assure
22 that before termination of the license:

23 (1) the licensee will comply with decontamination,
24 decommissioning, reclamation, and disposal standards prescribed by
25 the water commission [~~Agency~~], which shall be equivalent to or more
26 stringent than those of the Commission for sites at which such ores
27 were processed and at which such by-product material is deposited;

1 and

2 (2) the ownership of any disposal site other than a disposal
3 well covered by a permit issued under Chapter 27, Water Code, as
4 amended, and the by-product material resulting from the licensed
5 activity shall, subject to the provisions of Subsections (b)
6 through (f) of this Section and Subdivision (1) [~~(9)~~] of Subsection
7 (e) [~~(d)~~] of Section 4 of this Act, be transferred to the State of
8 Texas or the United States, if the State of Texas declines to
9 acquire either the site or the by-product material, or both.

10 (b) The water commission [~~Agency~~] may require by rule or
11 order that before the termination of a license that is issued after
12 the effective date of this Act, title to the land, including any
13 affected interests in the land, other than land held in trust by
14 the United States for any Indian tribe or owned by an Indian tribe
15 subject to a restriction against alienation imposed by the United
16 States, or land already owned by the United States, or by the State
17 of Texas, that is used for the disposal of by-product material as
18 defined in Subdivision (2) of Subsection (a) of Section 3 of this
19 Act, pursuant to the license, shall be transferred to the United
20 States or the State of Texas, unless the Commission determines,
21 before the termination, that transfer of title to the land and the
22 by-product material is not necessary to protect the public health,
23 safety, or welfare or to minimize danger to life or property.

24 (c) If transfer to the State of Texas of title to by-product
25 material as defined in Subdivision (2) of Subsection (a) of Section
26 3 of this Act and land is required, the water commission [~~Agency~~]
27 shall maintain the by-product material and land in a manner that

1 will protect the public health, safety, and the environment.

2 (d) The water commission [~~Agency~~] is authorized to undertake
3 in connection with the by-product material as defined in
4 Subdivision (2) of Subsection (a) of Section 3 of this Act and
5 property for which it has assumed custody under this Act any
6 monitoring, maintenance, and emergency measures necessary to
7 protect the public health and safety and the environment.

8 (e) The transfer of title to land and buildings and
9 by-product material as defined in Subdivision (2) of Subsection (a)
10 of Section 3 of this Act to the State of Texas does not relieve any
11 licensee of liability for any fraudulent or negligent acts done
12 before the transfer.

13 (f) Except for administrative and legal costs incurred in
14 carrying out the transfer, by-product material as defined in
15 Subdivision (2) of Subsection (a) of Section 3 of this Act and land
16 transferred to the State of Texas under this Act shall be
17 transferred without cost to the State of Texas.

18 SECTION 8. Section 6B, Chapter 72, Acts of the 57th
19 Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas
20 Civil Statutes), is amended to read as follows:

21 Sec. 6B. ADDITIONAL REQUIREMENTS FOR RADIOACTIVE WASTE
22 LICENSES. (a) A person who applies for a license to dispose of
23 radioactive waste from other persons must:

24 (1) arrange for and pay all of the costs of management,
25 control, stabilization, and disposal of radioactive waste and for
26 the decommissioning of the licensed activity;

27 (2) before applying for a license, acquire any interest in

1 and title to any land and buildings as required by [Agency] rule of
2 the water commission;

3 (3) convey to the State of Texas at the time of issuance of
4 the license to dispose of radioactive waste all right, title, and
5 interest in, of, and to any land and buildings acquired, together
6 with requisite rights of access to the property; and

7 (4) before termination of the license to dispose of
8 radioactive waste, formally acknowledge the conveyance to the State
9 of Texas of all right, title, and interest in, of, and to all
10 radioactive waste located on the property that has been conveyed.

11 (b) A licensee may not accept radioactive waste generated in
12 another state for processing or disposal under a license issued by
13 the water commission [Agency] except:

14 (1) under a compact entered into by the State of Texas;

15 (2) from another state that has in operation a radioactive
16 waste disposal site and that is willing to accept at that site
17 radioactive waste generated in Texas; or

18 (3) radioactive waste generated from manufactured sources or
19 devices originating in Texas.

20 (c) A licensee may not accept for disposal under a license
21 issued by the water commission [Agency], any high-level radioactive
22 waste as defined in Title 10, Code of Federal Regulations, any
23 irradiated reactor fuel, or any radioactive waste containing ten
24 (10) or more nanocuries per gram of transuranics. The water
25 commission [Agency] shall by rule establish special criteria for
26 disposal of radioactive waste with a half-life greater than
27 thirty-five (35) years and radioactive waste containing less than

1 ten (10) nanocuries per gram of transuranics.

2 (d) The water commission [Ageney] is authorized to undertake
3 in connection with the wastes and property for which it has assumed
4 custody under this Act any monitoring, maintenance, and emergency
5 measures necessary to protect the public health and safety and the
6 environment.

7 (e) The transfer of title to land and buildings and
8 radioactive waste to the State of Texas does not relieve any
9 licensee of liability for any fraudulent or negligent acts done
10 before the transfer or for any fraudulent or negligent acts done
11 while the land and buildings or radioactive waste is in the
12 possession or control of the licensee.

13 (f) Except for administrative and legal costs incurred in
14 carrying out the transfer, radioactive waste and land and buildings
15 transferred to the State of Texas under this Act shall be
16 transferred without cost to the State of Texas.

17 (g) The water commission [Ageney] may require at any
18 disposal site that the licensee provide facilities for a resident
19 inspector who is employed by the water commission [Ageney]. The
20 licensee shall reimburse the water commission [Ageney] for the
21 salary and other expenses of the inspector.

22 SECTION 9. Sections 7(a) and (b), Chapter 72, Acts of the
23 57th Legislature, Regular Session, 1961 (Article 4590f, Vernon's
24 Texas Civil Statutes), are amended to read as follows:

25 (a) The Agency or the water commission, or both, or [its]
26 duly authorized representatives shall have the power to enter at
27 all reasonable times upon any private or public property for the

1 purpose of determining whether or not there is compliance with or
2 violations of the provisions of this Act and rules, licenses,
3 registrations, and orders issued thereunder, except that entry into
4 areas under the jurisdiction of the Federal Government shall be
5 effected only with the concurrence of the Federal Government or its
6 duly designated representative.

7 (b) The authorized agents or employees of local governments
8 may have access to examine and copy at their expense during regular
9 business hours any records pertaining to activities licensed under
10 Section 6B of this Act, subject to the limitations of Chapter 424,
11 Acts of the 63rd Legislature, Regular Session, 1973, as amended
12 (Article 6252-17a, Vernon's Texas Civil Statutes). Records copied
13 pursuant to this subsection [~~section~~] shall be public records,
14 except that if a showing satisfactory to the water commission
15 [~~Director~~] is made by the owner of the records that the records
16 divulge trade secrets if made public, then the water commission
17 [~~Agency~~] shall consider those copied records as confidential.
18 Agents and employees shall not enter private property having
19 management in residence without notifying the management, or the
20 person in charge at the time, of their presence and exhibiting
21 proper credentials. The agents and employees shall observe the
22 rules and regulations of the establishment being inspected
23 concerning safety, internal security, and fire protection.

24 SECTION 10. Section 9(b), Chapter 72, Acts of the 57th
25 Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas
26 Civil Statutes), is amended to read as follows:

27 (b) Any person who, on the effective date of an agreement

1 under Subsection (a) above, possesses a license issued by the
2 Federal Government, shall be deemed to possess the same pursuant to
3 a license issued under this Act, which shall expire either ninety
4 (90) days after receipt from the Agency or the water commission of
5 a notice of expiration of such license, or on the date of
6 expiration specified in the federal license, whichever is earlier.

7 SECTION 11. Section 10, Chapter 72, Acts of the 57th
8 Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas
9 Civil Statutes), is amended to read as follows:

10 Sec. 10. INSPECTION AGREEMENTS AND TRAINING PROGRAMS. (a)
11 The Agency or the water commission, or both, are [~~is~~] authorized to
12 enter into, subject to the approval of the Governor, an agreement
13 or agreements with the Federal Government, other states or
14 interstate agencies, whereby this state will perform on a
15 cooperative basis with the Federal Government, other states or
16 interstate agencies, inspections or other functions relating to
17 control of sources of radiation.

18 (b) The Agency or the water commission, or both, may
19 institute training programs for the purpose of qualifying personnel
20 to carry out the provisions of this Act, and may make said
21 personnel available for participation in any program or programs of
22 the Federal Government, other states, or interstate agencies in
23 furtherance of the purposes of this Act.

24 SECTION 12. Section 11, Chapter 72, Acts of the 57th
25 Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas
26 Civil Statutes), is amended to read as follows:

27 Sec. 11. ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW. (a)

1 The Agency or water commission, or both, must [may] promulgate,
2 amend, and revoke rules and guidelines [~~relating--to--control--of~~
3 ~~sources--of-radiation~~] in the manner provided by the Administrative
4 Procedure and Texas Register Act, as amended (Article 6252-13a,
5 Vernon's Texas Civil Statutes).

6 (b) The Agency and the water commission shall afford notice
7 and an opportunity for a hearing in accordance with the Agency's or
8 the water commission's formal hearing procedures and the
9 Administrative Procedure and Texas Register Act, as amended
10 (Article 6252-13a, Vernon's Texas Civil Statutes), on written
11 request of any person affected by the following procedures:

12 (1) the denial, suspension, or revocation of any license or
13 registration;

14 (2) the determination of compliance with or the grant of
15 exemptions from a rule or order [~~of-the-Agency~~]; or

16 (3) the grant or amendment of a specific license.

17 (c) This subsection does not apply to license or
18 registration activities for which notice and hearing are required
19 under other provisions of this Act.

20 (d) Whenever the Agency or the water commission, or both,
21 find [~~finds~~] that an emergency exists requiring immediate action to
22 protect the public health and safety and the environment, the
23 Agency or the water commission, or both, may, without notice or
24 hearing, issue an order reciting the existence of such emergency
25 and requiring that such action be taken as it shall direct to meet
26 the emergency. Notwithstanding any other provision of this Act,
27 such order shall be effective immediately. Any person to whom such

1 order is directed shall comply therewith immediately. On written
2 application to the Agency or the water commission within thirty
3 (30) days of the date of the emergency order, the person to whom
4 the order was directed shall be afforded an opportunity for a
5 hearing. The hearing shall be held within not less than ten (10)
6 days nor more than twenty (20) days after the Agency or the water
7 commission receives the written application. On the basis of such
8 hearing, the emergency order shall be continued, modified, or
9 revoked by the Agency or the water commission.

10 (e) Judicial review of Agency or the water commission
11 decisions, rules, guidelines, and orders made, promulgated, issued,
12 amended, or revoked under the Administrative Procedure and Texas
13 Register Act, as amended (Article 6252-13a, Vernon's Texas Civil
14 Statutes), shall be under the substantial evidence rule. A person
15 who has exhausted all administrative remedies available within the
16 Agency or the water commission and who is affected by a final
17 decision of the Agency or the water commission is entitled to
18 judicial review under the Administrative Procedure and Texas
19 Register Act, as amended (Article 6252-13a, Vernon's Texas Civil
20 Statutes).

21 SECTION 13. Section 11A, Chapter 72, Acts of the 57th
22 Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas
23 Civil Statutes), is amended to read as follows:

24 Sec. 11A. SPECIAL PROCEDURES FOR LICENSING CERTAIN
25 BY-PRODUCT MATERIAL. (a) On issuance or renewal, if the water
26 commission [Agency] determines that a license to process materials
27 resulting in by-product material as defined in Subdivision (2) of

1 Subsection (a) of Section 3 of this Act will have a significant
2 impact on the human environment, the water commission [Agency]
3 shall prepare or secure the preparation of a written analysis that
4 shall be available to the public for written comment at least
5 thirty (30) days before the beginning of the hearing, shall be made
6 a part of the record, and shall include:

7 (1) an assessment of the radiological and nonradiological
8 impacts on the public health of the activity;

9 (2) an assessment of any impact on any waterway and
10 groundwater resulting from the activity;

11 (3) consideration of alternatives, including but not limited
12 to alternative sites and engineering methods, to the activities to
13 be conducted under the license; and

14 (4) consideration of the long-term impacts, including
15 decommissioning, decontamination, and reclamation impacts,
16 associated with activities to be conducted under the license,
17 including the management of by-product material as defined by
18 Subdivision (2) of Subsection (a) of Section 3 of this Act.

19 (b) The water commission [Agency] shall give notice of the
20 environmental impact analysis as provided by water commission
21 [Agency] rule and afford an opportunity for a public hearing in the
22 manner provided by the Administrative Procedure and Texas Register
23 Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes),
24 with right of appearance with or without counsel, examination, and
25 cross-examination of witnesses under oath or affirmation, and a
26 record made of the proceedings.

27 (c) After notice is given, the water commission [Agency]

1 shall afford an opportunity for written comments by persons
2 affected, who may be made parties to the proceedings on a
3 determination of their possessing a justiciable interest in the
4 outcome.

5 (d) The water commission [Agency] shall afford an
6 opportunity to obtain a transcript of any public hearing on request
7 and payment for the transcript or the posting of a sufficient
8 deposit to assure the payment by the person requesting the
9 transcript.

10 (e) The water commission [Agency] shall afford an
11 opportunity to obtain a written determination of the action to be
12 taken that is based on the evidence presented and the findings
13 included in the determination, and that is subject to judicial
14 review as provided by Subsection (e) [~~(d)~~] of Section 11 of this
15 Act.

16 (f) The water commission [Agency] shall prohibit any major
17 construction with respect to the activities to be licensed until
18 the requirement in Subsection (a) of this Section is completed.

19 (g) The water commission [Agency] shall assure that the
20 management of by-product material as defined by Subdivision (2) of
21 Subsection (a) of Section 3 of this Act is carried out in
22 conformity with applicable standards promulgated by the Commission.

23 (h) Notwithstanding any other provision of this Section, if
24 the water commission [Agency] finds that an emergency relating to
25 the management of by-product material as defined in Subdivision (2)
26 of Subsection (a) of Section 3 of this Act exists that requires
27 immediate action to protect the public health and safety and the

1 environment, the water commission [Agency] may take action under
2 Subsection (d) [~~e~~] of Section 11 of this Act.

3 SECTION 14. Section 11B, Chapter 72, Acts of the 57th
4 Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas
5 Civil Statutes), is amended to read as follows:

6 Sec. 11B. SPECIAL PROCEDURES FOR LICENSING RADIOACTIVE
7 WASTE. (a) Before a license to either process or dispose of
8 radioactive waste from other persons is granted or renewed, the
9 water commission [Agency] shall give at least thirty (30) days'
10 notice as provided by this subsection and provide an opportunity
11 for a public hearing in the manner provided by the Administrative
12 Procedure and Texas Register Act, as amended (Article 6252-13a,
13 Vernon's Texas Civil Statutes), and in the formal hearing
14 procedures of the water commission [Agency]. In addition to other
15 notice requirements, notice of a hearing under this subsection
16 shall be given by publishing a notice stating the subject of the
17 hearing and the time, place, and date of the hearing in the manner
18 provided by Articles 2 through 9, Revised Civil Statutes of Texas,
19 1925, as amended, for publication of notice for a special law in
20 the county where the proposed facility is to be located. Written
21 notice of the hearing stating the same information that appears in
22 the newspaper notice shall be sent by certified mail to persons who
23 own property adjacent to the proposed site pursuant to rules
24 promulgated by the water commission [Agency]. Notice specifically
25 required by this section shall be sent at least thirty (30) days
26 before the date of the hearing. The water commission [Agency] or
27 the applicant shall certify to this mailing, and the certificate

1 shall be accepted at the hearing as conclusive evidence of the fact
2 of such mailing.

3 (b) If the water commission [Agency] amends a license, the
4 amendment may take effect immediately. Notice of the amendment
5 shall be published one time in the Texas Register and one time in a
6 newspaper of general circulation in the county in which the
7 licensed activity is located and notice shall be given to anyone
8 who notified the water commission [Agency], in advance, of his
9 desire to be notified of any proposed amendment to the license.
10 The notice shall contain a short and plain statement of the
11 substance of the amendment identifying the license amended and the
12 licensee. If a person affected files a written complaint with the
13 water commission [Agency] within thirty (30) days after notice is
14 published, notice shall be given and a public hearing held to
15 consider the amendment as provided by Subsection (a) of this
16 section.

17 (c) Before beginning a hearing required under this section,
18 for each proposed activity that the water commission [Agency]
19 determines has a significant impact on the human environment, the
20 water commission [Agency] shall prepare or secure the preparation
21 of a written analysis, that shall be available to the public at
22 least thirty (30) days before the hearing begins, of the impact of
23 the licensed activity on the environment. The analysis shall
24 include:

25 (1) an assessment of the radiological and nonradiological
26 impacts on the public health of the activity;

27 (2) an assessment of any impact on any waterway and

1 groundwater resulting from the activity;

2 (3) consideration of alternatives to the activities to be
3 conducted under the license; and

4 (4) consideration of the long-term impacts, including
5 decommissioning, decontamination, and reclamation impacts,
6 associated with activities to be conducted under the license,
7 including the management of radioactive waste.

8 (d) The water commission [Agency] shall prohibit any major
9 construction with respect to the activities to be licensed until
10 requirements in Subsections (a) and (c) of this section are
11 completed.

12 (e) The water commission [Agency] shall assure that the
13 management of radioactive waste is carried out in compatibility
14 with applicable standards promulgated by the Commission.

15 (f) Notwithstanding any other provision of this section, if
16 the water commission [Agency] finds that an emergency relating to
17 the management of radioactive waste exists that requires immediate
18 action to protect the public health and safety and the environment,
19 the water commission [Agency] may take action under Subsection (d)
20 [~~(e)~~] of Section 11 of this Act.

21 SECTION 15. Section 12, Chapter 72, Acts of the 57th
22 Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas
23 Civil Statutes), is amended to read as follows:

24 Sec. 12. INJUNCTION PROCEEDINGS. Whenever, in the judgment
25 of the Agency or the water commission, or both, any person has
26 engaged in or is about to engage in any acts or practices which
27 constitute or will constitute a violation of any provision of this

1 Act, or any rule, license, registration, or order issued
2 thereunder, and at the request of the Agency or the water
3 commission, or both, the Attorney General shall make application to
4 any District Court either in Travis County or in any county in
5 which the violation occurred or is about to occur, at his option,
6 for an order enjoining such acts or practices, or for an order
7 directing compliance and for reimbursement to the Radiation and
8 Perpetual Care Fund if applicable, and for civil penalties as
9 provided in Section 15 of this Act, and upon a showing by the
10 Agency or the water commission, or both, that such person has
11 engaged or is about to engage in any such acts or practices, a
12 permanent or temporary injunction, restraining order, or other
13 appropriate order may be granted.

14 SECTION 16. Section 12A, Chapter 72, Acts of the 57th
15 Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas
16 Civil Statutes), is amended to read as follows:

17 Sec. 12A. THREAT OF DAMAGE BY CERTAIN BY-PRODUCT MATERIAL.

18 (a) If the water commission [Agency] determines that by-product
19 material as defined in Subdivision (2) of Subsection (a) of Section
20 3 of this Act or the operation by which that by-product material is
21 derived threatens the public health and safety and the environment
22 and that the licensee is unable to correct or neutralize the
23 threat, the water commission [Agency] shall issue an order
24 directing any action and corrective measures it finds necessary to
25 correct or neutralize the threat and shall use the security
26 provided by the licensee under this Act to pay the costs of actions
27 and corrective measures taken or to be taken.

1 (b) The water commission [Ageney] shall send a copy of its
2 order to the Comptroller of Public Accounts together with necessary
3 written requests authorizing the Comptroller to enforce security
4 supplied by the licensee, to convert the necessary amount of
5 security into cash, if necessary, and to disburse from this
6 security in the fund the amount necessary to pay costs of the
7 actions and corrective measures taken or to be taken by the water
8 commission [Ageney].

9 SECTION 17. Section 12B, Chapter 72, Acts of the 57th
10 Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas
11 Civil Statutes), is amended to read as follows:

12 Sec. 12B. THREAT OF DAMAGE BY RADIOACTIVE WASTE. (a) Under
13 procedures in Subsection (d) [~~(e)~~] of Section 11 of this Act, if
14 the water commission [Ageney] finds that radioactive waste
15 threatens the public health and safety and the environment and that
16 the licensee managing the radioactive waste is unable to neutralize
17 the threat, the water commission [Ageney] shall issue an order
18 directing any action and corrective measures it finds necessary to
19 neutralize the threat and shall use the security provided by the
20 licensee under this Act to pay the costs of actions and corrective
21 measures taken or to be taken.

22 (b) The water commission [Ageney] shall send a copy of its
23 order to the Comptroller of Public Accounts together with necessary
24 written requests authorizing the Comptroller to enforce security
25 supplied by the licensee, to convert the necessary amount of
26 security into cash, if necessary, and to disburse from this
27 security in the fund the amount necessary to pay costs of the

1 actions and corrective measures taken or to be taken by the water
2 commission [Agency].

3 SECTION 18. Section 12C, Chapter 72, Acts of the 57th
4 Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas
5 Civil Statutes), is amended to read as follows:

6 Sec. 12C. ACTIONS OF LOCAL GOVERNMENT AND PERSONS AFFECTED.

7 (a) If a local government is denied access to records, as provided
8 in this Act, the local government may bring suit in a District
9 Court in the county in which the violation occurs for an
10 appropriate order to obtain the records or to recover civil
11 penalties or for both an order and the penalties provided by
12 Subsection (b) of this section. Civil penalties recovered in a
13 suit under this subsection shall be paid to the local government.

14 (b) A person who denies access to records to a local
15 government as provided by this Act is liable to a civil penalty of
16 not less than One Hundred Dollars (\$100) and not more than One
17 Thousand Dollars (\$1,000) for each violation.

18 (c) A local government or person affected may file a written
19 complaint with the water commission [Agency] and request an
20 investigation of an alleged violation by a person licensed under
21 Section 6A or 6B of this Act. The water commission [Agency] shall
22 reply to the complaint in writing within sixty (60) days after
23 receipt of the complaint and shall provide a copy of any
24 investigation reports relevant to the complaint together with a
25 determination of whether or not the alleged violation was
26 committed.

27 (d) If the water commission [Agency] does not have a suit

1 brought in court under Section 12A or 12B of this Act within one
2 hundred twenty (120) days after the written complaint is filed
3 under Subsection (c) of this section, the local government or
4 person affected may bring suit in the appropriate court in the
5 county in which the alleged violation occurred or is about to occur
6 in the manner provided for suits by the water commission [Ageney]
7 under Section 12A or 12B of this Act. Penalties collected in a
8 suit under this subsection shall be paid to the state. In a suit
9 brought by a local government or person affected under this
10 subsection, the court shall include in any final judgment in favor
11 of the local government or person affected an award to cover
12 reasonable court costs and attorney's fees.

13 SECTION 19. Section 15(a), Chapter 72, Acts of the 57th
14 Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas
15 Civil Statutes), is amended to read as follows:

16 (a) A person who violates this Act or a rule, order,
17 license, or registration of the Agency or the water commission, or
18 both, is subject to a civil penalty of not less than One Hundred
19 Dollars (\$100) nor more than Twenty-five Thousand Dollars (\$25,000)
20 for each act of violation and for each day of violation.

21 SECTION 20. Section 15B, Chapter 72, Acts of the 57th
22 Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas
23 Civil Statutes), is amended to read as follows:

24 Sec. 15B. RECOVERY OF SECURITY. (a) If the water
25 commission [Ageney] uses security from the fund to pay for actions
26 or corrective measures to remedy spills or contamination by
27 radioactive material resulting from a violation of this Act or a

1 rule, license, registration, or order of the water commission
2 [Agency], the water commission [Agency] shall seek reimbursement
3 either through an [Agency] order or suit filed by the Attorney
4 General at the water commission's [Agency's] request.

5 (b) On request of the water commission [Agency], the
6 Attorney General shall file suit to recover security under
7 Subsection (a) of this section.

8 SECTION 21. Section 15C, Chapter 72, Acts of the 57th
9 Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas
10 Civil Statutes), is amended to read as follows:

11 Sec. 15C. ADMINISTRATIVE PENALTY. (a) If a person violates
12 this Act or a rule or order adopted or license or registration
13 issued under this Act, the Agency or the water commission, or both,
14 may assess a civil penalty against that person as provided by this
15 section.

16 (b) The penalty may be in an amount not to exceed \$10,000 a
17 day for a person who violates this Act or a rule, order, license,
18 registration or regulation issued under this Act. Each day a
19 violation continues may be considered a separate violation for
20 purposes of penalty assessment.

21 (c) In determining the amount of the penalty, the Agency or
22 the water commission, or both, shall consider:

23 (1) the seriousness of the violation, including but not
24 limited to the nature, circumstances, extent, and gravity of the
25 prohibited acts and the hazard or potential hazard created to the
26 health or safety of the public;

27 (2) the history of previous violations;

1 (3) the amount necessary to deter future violations;

2 (4) efforts to correct the violation; and

3 (5) any other matters that justice may require.

4 (d) If, after examination of a possible violation and the
5 facts surrounding that possible violation, the Agency or the water
6 commission, or both, conclude [~~concludes~~] that a violation has
7 occurred, the Agency or the water commission, or both, may issue a
8 preliminary report stating the facts on which the Agency or the
9 water commission, or both, [~~it~~] based the conclusion that a
10 violation has occurred, recommending that a civil penalty under
11 this section be imposed on the person charged, and recommending the
12 amount of that proposed penalty. The Agency or the water
13 commission shall base the recommended amount of the proposed
14 penalty on the seriousness of the violation as determined from the
15 facts surrounding the violation.

16 (e) Not later than the 10th day after the date on which the
17 report is issued, the Agency or the water commission shall give
18 written notice of the report to the person charged with the
19 violation. The notice shall include a brief summary of the
20 charges, a statement of the amount of the penalty recommended, and
21 a statement of the right of the person charged to a hearing on the
22 occurrence of the violation or the amount of the penalty or both
23 the occurrence of the violation and the amount of the penalty.

24 (f) Not later than the 20th day after the date on which
25 notice is sent, the person charged may either give to the Agency or
26 the water commission written consent to the Agency's or water
27 commission's report, including the recommended penalty, or make a

1 written request for a hearing.

2 (g) If the person charged with the violation consents to the
3 penalty recommended by the Agency or the water commission or fails
4 to timely respond to the notice, the Commissioner of Health or his
5 designee or the water commission by order shall either assess that
6 penalty or order that a hearing be held on the findings and
7 recommendations in the Agency's or water commission's report. If
8 the Commissioner or his designee or the water commission assesses
9 the penalty recommended by the report, the Agency or the water
10 commission shall give written notice to the person charged of the
11 decision and the person charged shall pay the penalty.

12 (h) If the person charged requests or the Commissioner or
13 his designee or the water commission orders a hearing, the
14 Commissioner or the water commission shall call a hearing and give
15 notice of the hearing. The hearing shall be held by a hearing
16 examiner designated by the Commissioner or the water commission.
17 The hearing examiner shall make findings of fact and promptly issue
18 to the Commissioner or the water commission a written decision as
19 to the occurrence of the violation and recommendation as to the
20 amount of the proposed penalty if a penalty is warranted. Based on
21 the findings of fact and recommendations of the hearing examiner,
22 the Commissioner or the water commission by order either may find
23 that a violation has occurred and may assess a civil penalty or may
24 find that no violation has occurred. All proceedings under this
25 subsection are subject to the Administrative Procedure and Texas
26 Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

27 (i) The Commissioner or the water commission shall give

1 notice of the [~~his~~] decision to the person charged, and if the
2 Commissioner or the water commission finds that a violation has
3 occurred and has assessed a civil penalty, the Commissioner or the
4 water commission shall give written notice to the person charged of
5 the [~~his~~] findings, of the amount of the penalty, and of the
6 person's right to judicial review of the Commissioner's or the
7 water commission's order.

8 (j) Within the 30-day period immediately following the day
9 on which the Commissioner's or the water commission's order is
10 final as provided by Section 16(c), Administrative Procedure and
11 Texas Register Act (Article 6252-13a, Vernon's Texas Civil
12 Statutes), the person charged with the penalty shall:

13 (1) pay the penalty in full; or

14 (2) if the person seeks judicial review of either the fact
15 of the violation or the amount of the penalty or of both the fact
16 of the violation and the amount of the penalty:

17 (A) forward the amount of the penalty to the Commissioner or
18 the water commission for placement in an escrow account; or

19 (B) instead of payment into an escrow account, post with the
20 Commissioner or the water commission a supersedeas bond in a form
21 approved by the Commissioner or the water commission for the amount
22 of the penalty, the bond to be effective until all judicial review
23 of the order or decision is final.

24 (k) Failure to forward the money to or to post the bond with
25 the Commissioner or the water commission within the time provided
26 by Subsection (j) of this section results in a waiver of all legal
27 rights to judicial review. Also, if the person charged fails to

1 forward the money or post the bond within the time provided by
2 Subsection (g) or (j) of this section, the Commissioner or the
3 water commission may forward the matter to the attorney general for
4 enforcement.

5 (l) Judicial review of the order or decision of the
6 Commissioner or the water commission assessing the penalty shall be
7 under the substantial evidence rule and shall be instituted by
8 filing a petition with a district court in Travis County, as
9 provided by Section 19, Administrative Procedure and Texas Register
10 Act (Article 6252-13a, Vernon's Texas Civil Statutes).

11 (m) If the penalty is reduced or not assessed, the
12 Commissioner or the water commission shall remit to the person
13 charged the appropriate amount plus accrued interest if the penalty
14 has been paid or shall execute a release of the bond if a
15 supersedeas bond has been posted. The accrued interest on amounts
16 remitted by the Commissioner or the water commission under this
17 subsection shall be paid at a rate equal to the rate charged on
18 loans to depository institutions by the New York Federal Reserve
19 Bank and shall be paid for the period beginning on the date the
20 penalty is paid to the Commissioner or the water commission under
21 Subsection (j) of this section and ending on the date that the
22 penalty is remitted.

23 (n) A penalty collected under this section shall be
24 deposited in the state treasury to the credit of the general
25 revenue fund.

26 SECTION 22. Section 16, Chapter 72, Acts of the 57th
27 Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas

1 Civil Statutes), is amended to read as follows:

2 Sec. 16. RADIATION AND PERPETUAL CARE FUND. (a) The
3 Radiation and Perpetual Care Fund is established in the State
4 Treasury, [and] may be used for the purposes described in
5 Subsection (c) of this section, and is administered by the water
6 commission.

7 (b) Except for fees collected under Sections 17 and 18 of
8 this Act, the water commission [Agency] shall deposit in the fund
9 all money and security received [~~by-the-Agency~~] under this Act.

10 (c) Money and security deposited in the fund may be used by
11 the water commission [Agency] only for decontamination,
12 decommissioning, stabilization, reclamation, maintenance,
13 surveillance, control, storage, and disposal of radioactive
14 material for the protection of the public health and safety and the
15 environment under this Act.

16 (d) Money and security deposited in the fund may not be used
17 for normal operating expenses of the water commission [Agency].

18 (e) If a licensed activity may require maintenance,
19 surveillance, or other care on a continuing or perpetual basis
20 after termination of the licensed activity, the water commission
21 [Agency] may require the licensee to pay annually to the water
22 commission [Agency] for deposit in the fund an amount determined by
23 the water commission [Agency].

24 (f) Each year the water commission [Agency] shall review a
25 licensee's payments to the fund made under Subsection (e) of this
26 section to determine if the payment schedule is adequate for the
27 maintenance and surveillance that the licensed activity requires or

1 may require in the future.

2 (g) Any estimates of costs required to be made under this
3 Act are subject to review and change by the water commission
4 [Agency] according to the need, nature, and cost of any
5 decontamination, stabilization, decommissioning, reclamation, and
6 disposal activity and the maintenance and surveillance required for
7 public health and safety and the environment. Any charges imposed
8 for maintenance and perpetual care shall be established at a level
9 consistent with existing technology. The charges imposed by the
10 water commission [Agency] may not exceed the estimated amount that
11 is projected by the water commission [Agency] to be required for
12 the maintenance and surveillance and other necessary care required
13 after termination of the licensed activity. Any increase in costs
14 may not be applied retroactively but may result in increases in
15 subsequent annual payments.

16 (h) If a licensee has satisfied all obligations under this
17 Act, the water commission [Agency] shall have the Comptroller of
18 Public Accounts promptly refund to the licensee from the fund any
19 excess of the amount of Subdivision (1) of this subsection over the
20 amount of Subdivision (2) of this subsection:

21 (1) all payments made by the licensee to the water
22 commission [Agency] for deposit into the fund under this Act and
23 all investment earnings on such payments; and

24 (2) the amount determined to be required for the continuing
25 maintenance and surveillance of the land, buildings, and
26 radioactive material conveyed to the state under this Act.

27 SECTION 23. Section 17, Chapter 72, Acts of the 57th

1 Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas
2 Civil Statutes), is amended to read as follows:

3 Sec. 17. FEES. (a) The Agency or the water commission may
4 prescribe and collect a fee for each license and registration.

5 (b) The amount of these fees shall be established by Agency
6 or water commission rule and may not exceed the actual expenses
7 incurred annually:

8 (1) in processing applications for a license or
9 registration;

10 (2) for amendments to or renewals of licenses or
11 registrations;

12 (3) for making inspections of licensees and registrants; and

13 (4) for enforcement of this Act and rules, orders, licenses,
14 and registrations of the Agency or the water commission.

15 (c) Fees collected by the Agency or the water commission
16 under this section shall be deposited in the General Revenue Fund.

17 SECTION 24. Section 19, Chapter 72, Acts of the 57th
18 Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas
19 Civil Statutes), is amended to read as follows:

20 Sec. 19. IMPORTATION OF LOW-LEVEL RADIOACTIVE WASTE FOR
21 PROCESSING. (a) The water commission [~~Agency~~] by rule may
22 prohibit a person who is licensed as a processor of radioactive
23 waste under this Act from accepting for processing low-level
24 radioactive waste generated outside this state.

25 (b) A rule adopted under Subsection (a) of this section may
26 not take effect sooner than 24 months before the opening date of a
27 low-level radioactive waste disposal site authorized under the

1 Texas Low-Level Radioactive Waste Disposal Authority Act (Article
2 4590f-1, Vernon's Texas Civil Statutes) and expires on the date
3 that the disposal site opens.

4 SECTION 25. Section 1.03(3), Texas Low-Level Radioactive
5 Waste Disposal Authority Act (Article 4590f-1, Vernon's Texas Civil
6 Statutes), is amended to read as follows:

7 (3) "Agency" means the Texas Water Commission [~~Radiation~~
8 ~~Control-Agency~~].

9 SECTION 26. Section 3.07A(g), Texas Low-Level Radioactive
10 Waste Disposal Authority Act (Article 4590f-1, Vernon's Texas Civil
11 Statutes), is amended to read as follows:

12 (g) The Texas Water Commission [~~Board--of--Health,---the~~
13 ~~commissioner--of--health,~~] or the Texas Low-Level Radioactive Waste
14 Disposal Authority may not relax any standard for the siting,
15 construction, or operation of the disposal site because such site
16 is located on state-owned land dedicated to the permanent school
17 fund or the permanent university fund.

18 SECTION 27. Section 3.08(b), Texas Low-Level Radioactive
19 Waste Disposal Authority Act (Article 4590f-1, Vernon's Texas Civil
20 Statutes), is amended to read as follows:

21 (b) The authority shall cooperate with appropriate federal
22 and state agencies in the licensing and authorization process and
23 shall supply any additional information and material requested by
24 those agencies. As a condition for obtaining a license, the
25 authority shall submit to the Texas Water Commission [~~Board--of~~
26 ~~Health~~] or its designee evidence as to the reasonableness of any
27 technique to be practiced at the proposed disposal site for

managing low-level waste. Before determining the techniques to be used, the authority shall study alternative techniques for managing low-level waste, including waste processing and reduction at the site of waste generation and at the disposal site, and the use of aboveground isolation facilities.

SECTION 28. Section 3.21(a)(2), Texas Low-Level Radioactive Waste Disposal Authority Act (Article 4590f-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(2) The Texas Water Commission [~~Department-of-Health~~] shall adopt rules relating to the packaging of radioactive waste, and an inspector employed by the department shall inspect all packaged radioactive waste before it is transported to a Texas permanent disposal site. The rules of the department shall provide that the department charge a reasonable fee for the inspection. The fee shall be limited to the cost of the inspection of the radioactive waste.

SECTION 29. Section 3.27, Texas Low-Level Radioactive Waste Disposal Authority Act (Article 4590f-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.27. HEALTH SURVEILLANCE SURVEY. The board, in cooperation with the Texas Water Commission [~~Department-of-Health~~] and local public health officials, shall study the feasibility of developing a health surveillance survey for the population in the disposal site vicinity.

SECTION 30. Section 3(d), Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is repealed.

SECTION 31. The terms of members of the Radiation Advisory

1 Board representing the nuclear utility industry, the radioactive
2 waste processing industry, and the uranium mining industry expire
3 on the effective date of this Act.

4 SECTION 32. (a) The rules required to be adopted by the
5 Texas Water Commission under this Act must be adopted and in force
6 not later than January 1, 1988. All rules of the Texas Department
7 of Health as the Texas Radiation Control Agency shall remain in
8 effect until the Texas Water Commission adopts rules for its
9 designated areas of responsibility under this Act.

10 (b) On January 1, 1988, all equipment, data, documents,
11 facilities, and other items of the Texas Department of Health
12 pertaining to the management and control of radioactive waste and
13 by-product material shall be transferred to the Texas Water
14 Commission.

15 (c) The Texas Department of Health and the Texas Water
16 Commission shall enter into any contracts or other agreements that
17 are necessary to make the transfer required under this Act between
18 the two agencies and to carry out an orderly transition.

19 (d) The transfer of responsibilities under this Act from the
20 Texas Department of Health to the Texas Water Commission regarding
21 the management and control of radioactive waste and by-product
22 material does not affect or impair any act done or obligation,
23 right, permit, license, standard, rule, criterion, order,
24 resolution, or penalty that has accrued or that exists under the
25 authority of the Texas Department of Health. The obligations,
26 rights, permits, licenses, standards, rules, criteria, orders,
27 resolutions, or penalties remain in effect until such time as they

1 are paid, recalled, changed, altered, renewed, amended, canceled,
2 revoked, repealed, or abolished under other law, rules of the Texas
3 Water Commission or the Texas Department of Health, or by contract,
4 agreement, or other act of either agency.

5 (e) This Act takes effect September 1, 1987.

6 SECTION 33. The importance of this legislation and the
7 crowded condition of the calendars in both houses create an
8 emergency and an imperative public necessity that the
9 constitutional rule requiring bills to be read on three several
10 days in each house be suspended, and this rule is hereby suspended.

H. B. No. 2440

By Larry Don Shaw

A BILL TO BE ENTITLED

AN ACT

Relating to reassigning certain radiation control functions
from the Texas Department of Health to the Texas Water Commission

MAR 13 1987

~~MAR 30 1987~~

1. Filed with the Chief Clerk.

2. Read first time and Referred to Committee on

Natural Resources

3. Reported favorably (as amended)
(as substituted) and sent to Printer at _____

4. Printed and distributed at _____

5. Sent to Committee on Calendars at _____

6. Read second time (amended); passed to third reading (failed) by (Non-Record Vote)
(Record Vote of _____ yeas, _____ nays, _____
present, not voting).

7. Motion to reconsider and table the vote by which H.B. _____ was ordered
engrossed prevailed (failed) by a (Non-Record Vote) (Record Vote of _____ yeas,
_____ nays, and _____ present, not voting).

8. Constitutional Rule requiring bills to be read on three several days suspended (failed
to suspend) by a four-fifths vote of _____ yeas, _____ nays, and _____
present, not voting).

9. Read third time (amended); finally passed (failed) by (Non-Record Vote) (Record Vote
of _____ yeas, _____ nays, _____ present, not voting).

10. Caption ordered amended to conform to body of bill.

11. Motion to reconsider and table the vote by which H. B. _____ was finally passed
prevailed (failed) by a (Non-Record Vote) (Record Vote of _____ yeas, _____
nays, and _____ present, not voting).

12. Ordered Engrossed at _____

13. Engrossed.

14. Returned to Chief Clerk at _____

15. Sent to Senate.

Chief Clerk of the House

16. Received from the House

17. Read, referred to Committee on _____

18. Reported favorably

19. Reported adversely, with favorable Committee Substitute; Committee Substitute read
first time.

20. Ordered not printed.

21. Regular order of business suspended by
(a viva voce vote.)
(_____ yeas, _____ nays.)

_____ 22. To permit consideration, reading and passage, Senate and Constitutional Rules
suspended by vote of _____ yeas, _____ nays.

_____ 23. Read second time _____ passed to third reading by:
(a viva voce vote.)
(_____ yeas, _____ nays.)

_____ 24. Caption ordered amended to conform to body of bill.

_____ 25. Senate and Constitutional 3-Day Rules suspended by vote of _____ yeas,
_____ nays to place bill on third reading and final passage.

_____ 26. Read third time and passed by
(a viva voce vote.)
(_____ yeas, _____ nays.)

OTHER ACTION:

OTHER ACTION:

Secretary of the Senate

_____ 27. Returned to the House.

_____ 28. Received from the Senate (with amendments,
(as substituted.)

_____ 29. House (Concurred) (Refused to Concur) in Senate (Amendments)
(Substitute) by a (Non-Record
Vote) (Record Vote of _____ yeas, _____ nays, _____ present,
not voting).

_____ 30. Conference Committee Ordered.

_____ 31. Conference Committee Report Adopted (Rejected) by a (Non-Record Vote) (Record
Vote of _____ yeas, _____ nays, and _____ present, not voting).

_____ 32. Ordered Enrolled at _____